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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**The Environmental Liability (Scotland) Regulations 2009**

**Operator to take remedial action**

- 12.**—(1) In the event that environmental damage has occurred, an operator must immediately—
- (a) notify the competent authority of the circumstances of the damage;
  - (b) take all practicable steps to control, contain, remove or otherwise manage any contaminants or any other damage factors in order to limit or prevent further environmental damage and adverse effects on human health or further impairment of services; and
  - (c) on approval being given by the competent authority in accordance with regulation 11, take the necessary remedial measures.
- (2) In the absence of any notification by an operator, if a competent authority has reasonable grounds for believing that environmental damage has occurred, it may require the operator to provide information about the damage.
- (3) The competent authority may, at any time—
- (a) require an operator to provide it with supplementary information on any environmental damage that has occurred following notification under paragraph (1)(a);
  - (b) take, require an operator to take, or give an operator instructions concerning, all practicable steps to immediately control, contain, remove or otherwise manage any contaminants and any other damage factors in order to limit or prevent further environmental damage and adverse effects on human health or further impairment of services;
  - (c) require an operator to take the necessary remedial measures.
- (4) Where an operator—
- (a) fails to comply with the requirements placed on it by paragraph (1) or (3)(b) or (c);
  - (b) cannot be identified; or
  - (c) is not required to pay the costs in accordance with these Regulations,
- the competent authority instead of an operator may itself take the necessary remedial measures but only as a means of last resort.
- (5) Failure by an operator to comply with the requirements of paragraphs (1) to (3) without reasonable excuse is an offence.